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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re J.K.,

a Person Coming Under the
Juvenile Court Law.

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

J.K.,

Defendant and Appellant.

A159188

(Sonoma County Super. Ct.
No. J392496)

In November 2018, J.K. was declared a ward of the juvenile court under Welfare and Institutions Code section 602.¹ In May 2019, J.K.'s wardship was continued after the court sustained another section 602 wardship petition against him. During the intervening months, J.K. was on probation and admitted allegations in multiple section 777 probation violation petitions. In November 2019, the juvenile court removed J.K. from

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

parental custody and placed him in probation camp. In December 2019, he filed a notice of appeal.

The central claim to J.K.'s appeal is that the juvenile court should have dismissed the underlying wardship petitions under section 709 subdivision (f), because he had been declared incompetent during the pendency of the section 602 petitions, and therefore, all the probation violation proceedings were nullities as well. We conclude many of J.K.'s claims are nonjusticiable because he did not timely appeal several of the court's orders.

We will review the orders entered in October and November of 2019, because they were timely appealed. As to those, many of the claims are moot. But we will strike a provision obligating J.K.'s parents to pay for his probation camp and otherwise affirm.

BACKGROUND

Because most of J.K.'s arguments present nonjusticiable or moot claims, we provide only a brief overview of the factual and procedural background of his delinquency proceedings.

On October 19, 2018, the Sonoma County District Attorney filed a section 602 juvenile wardship petition alleging J.K., then 15 years old, committed two misdemeanor counts for being disruptive at school (Pen. Code, § 626.8, subd. (a)). J.K. admitted one of the allegations, and the juvenile court sustained the petition.

In its November 15, 2018 disposition, the court declared J.K. a ward of the court and placed him on probation at home with electronic monitoring subject to conditions.

On November 28, 2018, the District Attorney filed a notice of probation violation under section 777 alleging J.K. violated probation by getting suspended from high school, accruing unexcused absences, making

unauthorized stops while on electronic monitoring, violating curfew, and failing to submit to a required chemical test.

The next day, J.K.'s counsel declared doubt as to J.K.'s competency, and the juvenile court suspended proceedings.

On January 15, 2019, the court found J.K. incompetent.

On April 12, 2019, the District Attorney filed a new section 602 petition alleging J.K., then 16 years old, committed a single count of misdemeanor vandalism (Pen. Code, § 594, subd. (a)).

On April 22, 2019, the juvenile court found J.K. was restored to competency and reinstated proceedings. That day, J.K. admitted five probation violations alleged in the November 2018 section 777 petition, as well as the vandalism alleged in the April 2019 petition. The court sustained both petitions.

In its May 6, 2019 disposition, the court retained J.K. as a ward on probation at home with electronic monitoring and subject to numerous conditions.

Yet another section 777 petition was filed on June 21, 2019, alleging J.K. violated probation by getting a tattoo, possessing gang paraphernalia, associating with a known gang member, possessing a knife, and possessing alcohol. Again, J.K. admitted the violations, and the court sustained the petition.

In its June 24, 2019 disposition, the court retained J.K. as a ward and committed him to 12 days in juvenile hall, after which he was to return home on probation with electronic monitoring.

On August 23, 2019, the District Attorney filed the final notice of probation violation petition involved in this appeal, alleging J.K. violated probation by failing to appear for weekend work crew as ordered by his

probation officer, possessing gang paraphernalia, associating with a known gang member, and violating curfew. After counsel again expressed doubt as to J.K.'s competency, he was detained in juvenile hall while proceedings were suspended pending another competency evaluation. The expert found J.K. to be competent and proceedings were reinstated.

On October 24, 2019, J.K. admitted the allegation that he possessed gang paraphernalia from the August 2019 section 777 petition, and the other allegations were dismissed. The court sustained the section 777 petition.

In its November 14, 2019 disposition, the court retained J.K. as a ward, removed him from parental custody, placed him under the supervision of probation, and committed him to a probation camp program for up to 14 months. The following week, he was transported to probation camp.

On December 19, 2019, J.K. filed a notice of appeal. In J.K.'s reply brief in this appeal, counsel states that she was "advised on August 26, 2020 that [J.K.] had been released from the county probation camp and that probation was terminated without record-sealing." We have confirmed that the juvenile court entered an order on May 7, 2020, terminating J.K.'s probation unsuccessfully and declining to seal the record. We take judicial notice of the court's order on our own motion.

DISCUSSION

A. The Juvenile Court's Failure to Dismiss under Welfare and Institutions Code Section 709, Subdivision (f) and the Juvenile Court's Orders Entered before October 24, 2019

Welfare and Institutions Code section 709, subdivision (f) ("Section 709(f)") states that if a minor subject to a juvenile wardship petition "is found to be incompetent and the petition contains only misdemeanor offenses, the petition shall be dismissed." (§ 709, subd. (f).)

J.K. argues that because he was found to be incompetent when the October 2018 petition was pending and was incompetent when the April 2019 petition was filed, the juvenile court was required to dismiss the wardship proceedings under Section 709(f). He claims that due to his incompetency both section 602 petitions should have been dismissed because the court lacked jurisdiction, and all orders stemming from the petitions, including all three disposition orders between November 2018 and November 2019, were nullities and should be vacated.

The People agree that the juvenile court erred when it failed to dismiss the section 602 petitions, but argue the claims are nonjusticiable because J.K. failed to timely appeal the court's failure to dismiss the petitions when each of them were adjudicated and ripe for appeal.

“One of the most fundamental rules of appellate review is that the time for filing a notice of appeal is jurisdictional.” (*In re A.O.* (2015) 242 Cal.App.4th 145, 148.) A minor may appeal a judgment in a section 602 proceeding “in the same manner as any final judgment.” (§ 800, subd. (a).) The minor may also appeal any subsequent order in such proceedings “as from an order after judgment.” (§ 800, subd. (a).) Generally, an appeal in a juvenile case must be filed “within 60 days after the rendition of the judgment or the making of the order being appealed.” (Cal. Rules of Court, rule 8.406(a)(1); *In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1138 (*Shaun R.*).)

“‘A timely notice of appeal, as a general matter, is “essential to appellate jurisdiction.”’ [Citation.] ‘In general, an appealable order that is not appealed becomes final and binding and may not subsequently be attacked on an appeal from a later appealable order or judgment.’” (*Shaun R., supra*, 188 Cal.App.4th at p. 1138.) Without a timely notice of appeal,

“‘the appellate court has no power to give relief, but must dismiss the appeal on motion or on its own motion.’ [Citation.] The purpose of the requirement of a timely notice of appeal is, self-evidently, to further the finality of judgments by causing the defendant to take an appeal expeditiously or not at all.” (*People v. Mendez* (1999) 19 Cal.4th 1084, 1094.)

Our Supreme Court’s recent opinion in *In re G.C.* (2020) 8 Cal.5th 1119 (*G.C.*) is dispositive on this issue. In *G.C.*, the juvenile court entered a dispositional order for certain offenses on November 19, 2015. (*Id.* at p. 1124.) After two additional dispositional hearings and orders on December 30, 2015 and January 26, 2016, G.C. filed a notice of appeal on February 1, 2016. (*Id.* at p. 1124.) G.C. attempted to challenge the November 2015 disposition in his appeal, by arguing the juvenile court neglected a mandatory statutory duty to specify whether the offenses found true in his wardship petitions were felonies or misdemeanors. (*Id.* at p. 1124.) The Court determined G.C.’s appeal was untimely. (*Id.* at pp. 1126-1128.) It explained the juvenile court’s error was ripe for review upon the disposition of his petitions in November 2015 but were not timely appealed. (*Id.* at 1126.) Thus, “well-settled law defeat[ed] G.C.’s further right to appellate review” of the earlier petitions. (*Id.* at p. 1127.) The Court also rejected G.C.’s argument that all petitions in a juvenile proceeding are one case, so a timely appeal of one petition confers jurisdiction over all petitions. (*Id.* at pp. 1126-1127 [“G.C fails to grapple with clear authority prohibiting a challenge to a final dispositional order through an appeal from a later order.”].)

The well-settled law that defeated G.C.’s right to appellate review also defeats J.K.’s right to appellate review of the October 2018 and April 2019 section 602 petitions. The 60-day deadline for appealing the November 15, 2018 order ran on January 14, 2019. The 60-day deadline for appealing the

May 6, 2019 order was July 5, 2019. J.K.'s sole notice of appeal in the record was filed on December 19, 2019, far too late to contest the adjudication of the October 2018 and April 2019 petitions. Accordingly, we lack appellate jurisdiction over those orders, and they are final and binding and cannot be attacked here.

Notwithstanding, J.K. argues his appeal of the October 2018 and April 2019 petitions is justiciable under an exception to the general rule requiring a timely notice of appeal. He claims this exception allows “an order that is void for lack of jurisdiction [to] be challenged at any time.” Here, J.K. says that because the juvenile court failed to dismiss his wardship petitions as required under Section 709(f), the court “lacked fundamental jurisdiction” and its “judgments are nullities which [this] Court can and should set aside, regardless of the fact that [his] trial counsel failed to file notices of appeal . . .”

“ ‘When courts use the phrase “lack of jurisdiction,” they are usually referring to one of two different concepts, although, as one court has observed, the distinction between them is “hazy.” [Citations.] A lack of jurisdiction in its fundamental or strict sense results in ‘ “an entire absence of power to hear or determine the case, an absence of authority over the subject matter or the parties.” [Citation.] On the other hand, a court may have jurisdiction in the strict sense but nevertheless lack “ ‘jurisdiction’ (or power) to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites.” [Citation.] When a court fails to conduct itself in the manner prescribed, it is said to have acted in excess of jurisdiction.’ [Citations.] [¶] The distinction is important because the remedies are different. ‘[F]undamental jurisdiction cannot be conferred by waiver, estoppel, or consent. Rather, an act beyond a

court's jurisdiction in the fundamental sense is null and void' *ab initio*.

[Citation.] "Therefore, a claim based on a lack of [] fundamental jurisdiction[] may be raised for the first time on appeal. [Citation.] "In contrast, an act in excess of jurisdiction is valid until set aside, and parties may be precluded from setting it aside by such things as waiver, estoppel, or the passage of time." ' " (*People v. Lara* (2010) 48 Cal.4th 216, 224-225.)

Under these standards, we are not persuaded that the challenged juvenile court orders were void and may be attacked at any time. The juvenile court did not lack jurisdiction over J.K. in the fundamental sense. Barring exceptions not applicable here, "any minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime . . . is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court." (§ 602, subd. (a).) The juvenile court had authority over J.K. to adjudicate his petitions. Even J.K. acknowledges that notwithstanding his recent termination of probation, "he remains subject to juvenile court jurisdiction until February 27, 2021," that is, when he turns 18 years old.

Rather, the juvenile court actions J.K. challenges here are properly characterized as voidable acts in excess of jurisdiction. Where a court has jurisdiction over the subject matter and parties in the fundamental sense, but lacks the power to act except in a particular manner, or to give certain kinds of relief, or to act without the occurrence of certain procedural prerequisites, its actions are merely voidable. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1422 (*Ramirez*).) The juvenile court had "fundamental jurisdiction" over J.K. but under Section 709(f) was obliged to dismiss the pending wardship petitions against him when he was found to be incompetent. The

court's failure to dismiss them was merely voidable and an act in excess of jurisdiction. Because a challenge to a ruling "in excess of jurisdiction is subject to forfeiture if not timely asserted" (see *Ramirez, supra*, 159 Cal.App.4th at p. 1422; see also *People v. Gerold* (2009) 174 Cal.App.4th 781, 787), J.K.'s failure to timely appeal the earlier orders making him a ward of the court, subjecting him to probation, or sustaining petitions alleging probation violations means he cannot challenge those orders now.

B. Appealability of Orders Entered on and after October 24, 2019

In addition to the adjudications of the October 2018 and April 2019 section 602 petitions, and a 2018 probation violation, J.K. seeks to challenge his admission to a probation violation on October 24, 2019, and the dispositional order committing him to probation camp on November 14, 2019. The 60-day deadline to appeal the October 24, 2019 order ran on December 23, 2019. So, J.K.'s notice of appeal is timely with respect to the orders of October 24 and November 14, 2019. We will address his claims of error addressed to each of those orders. For all other claims related to earlier orders, we lack appellate jurisdiction, and they are dismissed.

C. Probation Violation Admission on October 24, 2019

J.K. contends the adjudication of a section 777 petition alleging he violated probation should be reversed because his admission to the allegations on October 24, 2019 was not voluntary, intelligent or knowing. This argument is predicated upon his contention that he was unaware the juvenile court lacked fundamental jurisdiction over him at the time of his admission because proceedings against him should have been dismissed under Section 709(f).

So, even though J.K.'s appeal from the court's order accepting his October 2019 admission is timely, we reject the premise. There is no doubt

that a minor's admission to a petition must be voluntary, intelligent, and knowing. (See *In re Tahl* (1969) 1 Cal.3d 122, 130, overruled on other grounds in *Mills v. Municipal Court* (1973) 10 Cal.3d 288; Cal. Rules of Court, rule 5.778(f)(5)). J.K.'s argument turns on his view that he was not under the juvenile court's jurisdiction when he made his admission because the earlier April 2019 wardship petition should have been dismissed and the probation conditions that he was charged with violating should never have been imposed. But as we explained above, J.K. did not timely appeal the wardship. Thus, when J.K. admitted violating probation, the orders designating him a ward of the court and imposing the conditions underlying the charged probation violation were final and not susceptible to challenge. J.K.'s claimed lack of knowledge about the juvenile court's lack jurisdiction at the time of his October 2019 admission is misplaced and provides no basis to invalidate his admission.²

D. Education and Mental Health Services Findings

J.K. also argues the juvenile court failed to make required findings and orders at the November 2019 disposition hearing regarding J.K.'s needs for special education and mental health services pursuant to statute, rules of court, and standards of judicial administration. He also contends that "there

² We further observe that J.K.'s competency was restored as of April 22, 2019. Thus, in May 2019, when the April 2019 wardship petition was sustained and the probation conditions established, J.K. was competent and remained so through the rest of his delinquency proceedings. As such, J.K. was considered competent when the District Attorney filed the section 777 probation violation petition on August 23, 2019 which contained the allegation he admitted on October 24, 2019 and which he challenges here.

was insufficient evidence that the probation camp was the most appropriate, least restrictive setting that would address those needs.”

While this claim is timely and challenges the court’s November 2019 disposition, based on the termination of J.K.’s probation since submitting his opening brief, his counsel acknowledges that this issue appears “technically moot.” Nonetheless, J.K. requests that we exercise our discretion to reach this issue because it presents a matter of public importance, may evade review, and may also affect future proceedings.

“The duty of this court, as of every other judicial tribunal, is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’ ” (*In re Miranda* (2011) 191 Cal.App.4th 757, 762.) “Generally, courts decide only ‘actual controversies’ which will result in a judgment that offers relief to the parties.” (*Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178.) “Thus, appellate courts as a rule will not render opinions on moot questions[.]” (*Id.* at p. 1178.) “[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) “‘Consequently the question of mootness must be decided on a case-by-case basis.’ ” (*In re Joshua C.* (1994) 24 Cal.App.4th 1544, 1547.)

Here, if we found reversible error, any decision we make would not provide J.K. effective relief. The remedy he sought is reversal of his commitment to probation camp. Our remedy upon a finding of error would be to reverse the order committing J.K. to probation camp and to remand for a new disposition hearing. This would provide no meaningful relief to J.K.

because he has been released from camp and his probation has been terminated. Further, there is no indication that J.K.'s release is only temporary or that matters remain pending against him in the juvenile court for which such findings would be essential.

In addition, while this court has discretion to reach the merits of otherwise moot claims in certain circumstances (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1404), we decline to do so here. We are not persuaded that the issues raised by J.K. involve matters of broad public interest which are likely to recur, continue to evade review, or will have an effect on future proceedings involving J.K.

D. CASA Appointment

“A Court Appointed Special Advocate (CASA) program is a child advocacy program that recruits, screens, selects, trains, supervises, and supports lay volunteers for appointment by the court to help define the best interest of children and nonminors under the jurisdiction of the juvenile court, including the dependency and delinquency courts.” (Cal. Rules of Court, rule 5.655(a)(1).) CASAs are volunteers who “may be appointed to any dependent, nonminor dependent, or ward who is subject to the jurisdiction of the juvenile court.” (§ 102, subd. (b), italics added.)

J.K. requested a CASA volunteer to assist him. When the juvenile court committed J.K. to probation camp it did not appoint him a CASA. J.K. contends the court's failure to do so was an abuse of discretion.

In his reply brief, J.K. identifies this as another issue made moot by his change in status. Nevertheless, he asks that we exercise our discretion to reach this issue because it presents a matter of public importance that may otherwise evade review. He points out that “there is no published authority

guiding the juvenile court's exercise of discretion on requests for appointments of CASA volunteers."

Indeed, this issue, too, is now moot. If we found reversible error, we could not provide J.K. any effective relief. Upon finding such error, we could remand for the court to address the CASA request. But since J.K. has already been released from probation camp and his probation terminated, granting such a remand would be pointless. Further, as we have previously noted, there is no indication that J.K.'s release is only temporary or that further delinquency matters are pending against him in which a CASA volunteer could assist him. We also decline to exercise our discretion to review the merits of this claim.

E. Parental Obligation to Pay

At the November 2019 dispositional hearing the court issued the following directive: "Parent(s) shall be responsible for the cost of care, support and maintenance of the minor in any placement, commitment or detention facility." J.K. contends the order obligating his parents to pay for his probation camp placement must be stricken. The People agree.

J.K. asserts his change of status does not moot this issue because the financial obligation may still be enforced. Based on the possibility of enforcement, we agree that this particular issue is not moot and further agree with both parties that the directive should be stricken.

Section 903 governs the responsibility of parents for financial support of minors in the juvenile court system. (§ 903.) Section 903, subdivision (e)(1), however, establishes that its financial obligations "do[] not apply to a minor who is adjudged a ward of the juvenile court, who is placed on probation pursuant to Section 725, who is the subject of a petition that has been filed to adjudge the minor a ward of the juvenile court, or who is the

subject of a program of supervision undertaken pursuant to [Welfare & Institutions Code] [s]ection 654.” (§ 903, subd. (e)(1).) Since J.K was adjudged a ward of the juvenile court, the court erred when it held his parents financially responsible for his camp commitment. The minute order will be amended to strike that provision.

F. Maximum Term of Confinement

When the juvenile court committed J.K. to probation camp, it set his maximum term of confinement at 14 months. J.K argues this too should be stricken due to the lack of jurisdiction over him because the earlier section 602 petitions should have been dismissed pursuant to Section 709(f).

Not only would we reject this claim for the same reason we have rejected J.K.’s other claims of error premised upon this argument, J.K. has been released from probation camp and his probation terminated. He points to no future juvenile court proceeding that will be impacted by any change to the maximum term set in the November 2019 disposition order. If we deemed the maximum term erroneous and struck it, the decision would not affect J.K. in any way. The matter is moot, and we need not decide the issue.

G. Custody Credits

In the November 2019 dispositional order, the juvenile court awarded J.K. 154 days of custody credits. However, at the ensuing placement review hearing, the court did not increase J.K.’s credits to account for the seven-day period between the dispositional hearing and the date J.K. was transported to probation camp. J.K. argues he was entitled to seven days’ credit for time served in a secure facility prior to his commitment to camp. The People concede the point.

However, as with the maximum term of confinement, this issue is moot. J.K. has been released from probation camp, his probation has been

terminated. He points to no future juvenile court proceeding that will be impacted by amending the minute order to add seven days of custody credits. Such an amendment would not affect J.K. in any way. Accordingly, we will not decide this issue either.

H. Ineffective Assistance of Counsel

Finally, J.K. argues that his trial counsel was ineffective because several of his arguments were forfeited due to the failure of counsel to move to dismiss the charges against him in the October 2018 and April 2019 under Section 709(f), and in allowing him to admit the allegations of section 602 petitions and probation violations when the juvenile court had no jurisdiction over him. These ineffective counsel arguments concern the orders arising from proceedings prior to the October 24, 2019 and November 14, 2019 disposition orders. As we have explained, the lack of a timely appeal at that time prevents us from considering claims of error associated with those orders in this appeal.

J.K.'s remaining ineffective counsel arguments concern matters which have become moot and which we have declined to consider on the merits. Since the underlying issues present moot claims, we shall not consider whether they arose due to ineffective assistance of counsel.

DISPOSITION

The juvenile court's November 14, 2019, disposition minute order is amended to strike the portion of the order which states, "Parent(s) shall be responsible for the cost of care, support and maintenance of the minor in any placement, commitment or detention facility." In all other respects, the juvenile court's orders from October 24, 2019 and November 14, 2019, are affirmed.

Siggins, P.J.

WE CONCUR:

Petrou, J.

Jackson, J.

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